



**Public Hearing on  
Non-Profit Agency Governance and Executive Compensation  
Related to the Javits-Wagner-O'Day (JWOD) Program**

**Written Testimony of Robert L. Hofmann, President,  
Maryland Works, Inc. to the Committee for Purchase From  
People Who Are Blind or Severely Disabled (the Committee)**

**January 12, 2006**

Good afternoon honorable committee members and staff. My name is Robert Hofmann, and I serve as president of Maryland Works. Maryland Works is a statewide association that promotes employment opportunities and economic independence for people with disabilities. Our members include non-profit community service providers and individual workforce development professionals. We achieve our mission through provision of training, policy advocacy, partnership development, public education and coordination of a state contracting preference program akin to the federal Javits-Wagner-O'Day (JWOD) Program. I am here today to support your Committee's efforts to promulgate regulations related to non-profit agency governance and executive compensation under the JWOD Program and to provide input on the criteria published in the December 16, 2005 Federal Register.

Utilizing the federal government's vast procurement system to provide training and employment opportunities for people with disabilities makes a lot of sense. And the JWOD Program has a long history of providing real work experience at competitive wages with good benefit packages. At the same time, as originally designed, the JWOD program is not realizing its full potential. Many more individuals could benefit from the program. Yet, even as we stand on the threshold of a promising future for a refined and expanded JWOD Program, lawmakers' and the public's confidence has been shaken by perceptions of abuse within the Program.

This is not a time for defensiveness or protectionism. We agree with the Committee that it is a time for action; action to eradicate any abuses that may exist, action to strengthen the integrity of the Program and action that will restore the public's confidence and allow us all to place our attention on our collective mission of expanding

skills training, employment and career opportunities for people with disabilities. We fully support then the Committee's actions to move forward with regulations to address non-profit agency governance and executive compensation issues under the JWOD Program. As the Committee requested, I will respond to each of the questions published in the December 16, 2005 Federal Register. I'll start with the nine (9) questions related to non-profit agency governance:

*(1) Are these (published) criteria comprehensive and inclusive enough to effectively evaluate that a non-profit agency demonstrates good governance practices and should be deemed qualified to participate in the JWOD Program?*

We agree with the Committee's assertion that these criteria, while not all inclusive, represent a good set of core requirements for non-profit agency governance practices. We do recommend that the regulations provide mechanisms for the Committee to review and amend the criteria on at least a bi-annual (every two years) basis.

*(2) Are there additional criteria that should be used, or substituted for the above, to evaluate evidence of good governance practices by non-profit agencies in the Program?*

The criteria suggested by the Committee in its December 16, 2005 Federal Register notice represent a good starting point and incorporate elements which we believe address the most pressing concerns raised within recent media and Congressional reports. Additionally, the proposed criteria correlate well with those recommended by the Panel on the Non-Profit Sector in their 2005 report "Strengthening Transparency, Governance, and Accountability of Charitable Organizations".

*(3) Should accreditation by one or more state or national organizations be recognized as evidence of a non-profit agency adhering to good governance practices without further review by the Committee?*

Yes, assuming that the Committee has ensured that: 1) a particular accreditation entity's standards include at a minimum the criteria proposed by the Committee; and 2) that the Committee is reasonably assured that the accreditation entity will apply the criteria in all cases. It is also possible that individual accrediting bodies would be willing to create a "JWOD Service" category within their accrediting process, similar to how they currently accredit other specific service areas within a particular non-profit agency.

*(4) Should different benchmarks be used for non-profit agencies that are state, county, or local government agencies, or should they be exempt from any Committee regulations in this area?*

While certain aspects of the proposed criteria may not apply for all government entities participating in the JWOD Program, e.g. a Board of Directors hiring the lead staff person, it is essential that the Committee be assured that the operating principles inherent to the proposed criteria still apply. For example, executive salaries should be set within a process that assesses comparable positions in comparable entities.

Assuming that government service providers are immune from some of the problems that the proposed criteria address would be dangerous. For example, it is entirely possible that a particular government sponsored service provider is allowed to establish and operate under policies (and even operating accounts) that fall outside of the broader government unit's direct review and control.

*(5) Should the size and/or the annual revenue of the non-profit agency be a factor or factors in assessing appropriate governance practices?*

No. All non-profits, regardless of size, are not only expected ethically, but are required legally, to uphold certain core standards and practices.

The one consideration that should be made in regard to the proposed criteria is affordability of compliance documentation. For example, should the Committee adopt the use of third party accrediting entities for the review process, consideration should be given to the cost of accreditation. In that case, perhaps smaller non-profit agencies could receive a subsidy within the JWOD Program for the cost of third party accreditation.

*(6) What is the best way to ensure that only qualified central non-profit agencies and non-profit agencies, with an internal structure that minimizes opportunities for impropriety, participate in the JWOD Program?*

Adopting and enforcing the proposed criteria will help reinforce the Committee's intent in both concept and concrete terms to ensure that JWOD agencies are operating with appropriate governance standards in place. The promulgation of regulations itself will help to set a tone of intolerance for abuses. It is critical then that compliance evaluation is taken seriously and that, for example, flexibility does not become complacency. It is also advisable that there is regular and ongoing communication of good governance and internal control concepts and practices to participating non-profits. The Committee should also consider requiring participation in at least annual training for participating non-profits. Such training could be provided via electronic means to avoid undue costs to participants.

*(7) What if any enforcement mechanisms should be adopted to ensure only the qualified central non-profit agencies and non-profit agencies participate in the JWOD Program?*

As stated earlier, compliance with the criteria must be enforced if non-profits are to take them seriously. Guidelines should be established which provide specific sanctions for non-profits that do not comply with the established criteria. For example, at a minimum, non-profits that are not complying with the proposed criteria should be ineligible for assignment of new contracts under the program. And extended non-compliance should result in more significant sanctions such as, for example, a non-profit being divested of all of the contracts they are assigned under the JWOD Program. The Committee should also continue with and increase in frequency its periodic on-site compliance visits.

*(8) What steps will the non-profit agencies and central non-profit agencies need to take to avoid conflicts of interest among its board members?*

First and foremost, non-profit entities must have the prescribed conflict of interest policies that would be required under the proposed criteria. Beyond the presence of the policies, non-profit leadership must stay abreast of developments in the non-profit sector and ensure that their board members are well versed in both the need for strict adherence to such policies and the liabilities that exist as a result of non-compliance. The Committee can aid this process by: a) ensuring that non-profit agencies are complying with the requirement that they have a suitable policy, b) conducting regular communication with the non-profit leadership, and c) providing training on the subject.

*(9) What steps will the non-profit agencies and central non-profit agencies have to take to demonstrate financial responsibility?*

There are many aspects of financial responsibility for non-profit agencies. Foremost is the need to ensure that an individual agency's board of directors understands its role and legal responsibility in overseeing the agency's finances. This is covered in part by some of the Committee's recommended criteria pertaining to the board's role vis-à-vis independent auditor report and management letter and review of the non-profit's compensation structure.

Non-profit agency financial responsibility as it relates directly to JWOD Program contract fees should be monitored to ensure that fair market price allowances are followed in practice. For example, at a minimum, reporting of actual direct worker wages (and periodic on-site compliance review) should continue.

I will also provide a response to each of the seven (7) questions related to executive compensation:

*(1) What is the threshold beyond which the compensation paid to the executives in a JWOD-participating non-profit agency should be considered as influencing a proposed fair market price determination? For example, if the agency receives more than a certain percentage of its total revenue from sales through the JWOD Program, is there a compensation level (total dollars paid or total dollars paid as a percentage of total revenue) at and above which fair market price impact would be deemed to occur?*

In general, fair market prices for JWOD contracts are set based on prevailing competitive market rates (those charged by commercial vendors) for similar products and services. And, it is our understanding that the vast majority of contracts under the JWOD Program have their "General and Administrative" cost reimbursements (which include executive compensation costs) capped at 9.5%; a rate that is on average lower than that found in the open (commercial) market place. To the extent that non-profit agency executive compensation levels do not drive fair market prices within the JWOD

program, there is not a threshold above or below which non-profit executive compensation is an influence.

However, it is our understanding that a small number of “exceptions” are currently allowed under a policy that allows any non-profit agency the opportunity to “make its case” for a higher General and Administrative cost reimbursement if it can demonstrate that its actual costs are higher. It is entirely possible that these exceptions exist only for reasonable and legitimate circumstances; for example, certain types of contracts may require agency administrative capacities that warrant a higher than usual reimbursement. At the same time, we suggest a closer examination of this practice to ensure that exceptions are only granted based on the type of work performed or other legitimate rationale, regardless of which individual non-profit is involved.

*(2) Conversely, is there a point below which executive compensation, regardless of the dollar amount paid, would not be considered as influencing a recommended fair market price? Is such a de minimis test appropriate for large diversified non-profits where total JWOD sales represent only a small percentage of total revenue?*

Again, fair market prices for JWOD contracts are in general set based on prevailing market rates for similar products and services. To the extent that non-profit agency executive compensation levels do not drive fair market prices within the JWOD program, there is not a threshold above or below which said executive compensation is an influence. This assumes careful attention is given to assure that fair market price exceptions are not granted which are driven by high executive compensation.

*(3) Without regard to any analysis of JWOD-related revenue, is there an established benchmark or absolute dollar threshold above which compensation would be deemed as influencing a proposed fair market price?*

As a matter of policy and practice, non-profit executive compensation is not an influence in setting fair market prices for contracts under the JWOD Program. These policies and practices should continue, and be strengthened if necessary. Furthermore, it should be explicitly stated that no exceptions will be allowed in regard to influencing a fair market price under the JWOD Program.

*(4) Should receipt of documentation to support a “rebuttable presumption of reasonableness” serve to demonstrate that executive compensation does not by itself influence a proposed fair market price or any adjustment thereto?*

To the extent that executive compensation within JWOD participating non-profits is not an influencing factor in setting of fair market prices, demonstration of reasonableness becomes immaterial for purposes of pricing. However, as a matter of required good governance practice in general, the process of documenting a “rebuttable presumption of reasonableness” by individual non-profit agencies will most certainly be required to ensure their compliance with the proposed criteria. Such a process is not infallible however, and compliance reviews should be undertaken to ensure the effectiveness of individual non-profit’s processes.

*(5) To what extent should there be a relationship between the pay and compensation of line workers and highly compensated individuals?*

For purposes of the JWOD Program, and pricing of individual contracts, line worker wages and other compensation are driven by market rates as part of setting fair market prices. As stated earlier, participating non-profit agencies should be required to report their actual wages paid under JWOD contracts, with particular attention to direct worker wages. And such reports should be validated as part of the ongoing and more frequent on-site compliance review process.

*(6) At what point would it be appropriate to begin a review of an executive compensation package even if the proposed price for a product or service would fall within a range that it could be considered as a fair market price?*

Assuming that it is ensured that executive compensation is not allowed to influence fair market prices under the JWOD Program, the matter of executive compensation becomes one of general eligibility of a non-profit to qualify for participation. In that regard, it may be prudent to include as part of the eligibility process (including ongoing eligibility) a “test” of individual agency’s executive compensation against an industry standard range. Policy could be set, for example, that in cases where an executive compensation package falls a certain percentage above the industry standard that a more in depth review take place. Such a review could be conducted by a panel of non-involved professionals and could take into consideration such tangible factors as the number of people served, complexity of services and geographic location, among others; as well as intangibles such as an the agency’s board’s perception of the risk of losing the executive altogether, the agency’s history with funding sources, etc.

*(7) What approaches are available to identify and monitor non-profit agencies executive compensation that would provide such information to the Committee routinely but without placing an undue burden on agencies?*

Non-profit entities, whose revenues exceed \$25,000 within a given fiscal year, are required to complete federal IRS form 990. The 990 form requires disclosure of highly compensated employees’ total compensation. These reports (form 990) are considered public documents and in most cases are available to the general public on-line (on the Internet). Requiring copies of 990 reports from participating non-profit agencies would therefore constitute an insubstantial burden on them.

Again, we applaud the Committee for stepping up to this challenge in a manner that is aimed at restoring public confidence in the JWOD Program, thereby enabling all of us to shift our focus to the important work of planning JWOD’s future on the cutting edge of employment opportunities for people with disabilities. We believe much more is

possible from this important and much needed program. Moreover, all of us at Maryland Works stand ready to work with you, your committee, and any others who are invested in maximizing the quality and quantity of employment outcomes for people with disabilities.

Thank you for the opportunity to testify today. We look forward to the work ahead.